



University of Hawai'i at Mānoa

Environmental Center

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HB 397 RELATING TO ENVIRONMENTAL PROTECTION

House Committee on
Energy and Environmental Protection

Public Hearing - February 25, 1995
9:00 A.M., Room 1310 SOT

By
John T. Harrison, Environmental Center
Peter Rappa, Sea Grant
Andrew Tomlinson, Environmental Center

HB 397 would repeal provisions in various subchapters of HRS 342 requiring the director of health to obtain the governor's approval prior to issuing emergency orders.

Our statement on this bill does not constitute an institutional position of the University of Hawaii.

Any imminent peril to public health and safety deserves the unrestricted discretion of the state's chief health protection officer. Thus, this measure merely affirms a common sense provision for direct crisis intervention. However, we note two relevant considerations:

1. As written, the director is empowered to make discretionary judgments as to the imminence as well as the degree of the public health risk. Although legitimate concerns may arise over perceived arbitrary determinations, we suggest that in the realm of public health and safety, the state is constitutionally bestowed police powers, and error on the side of caution is justifiable.
2. Strictly construed, Chapter 128D, HRS, already provides for determination of "imminent and substantial endangerment..." and emergency response by the director consistent with the state contingency plan. The only substantive additional power offered by this measure is the elimination of state contingency plan consistency. It would appear that the purposes of this measure thus may be achieved within the department of health through rulemaking, and statutory amendment is unnecessary.